

HOUSE No. 1567

By Mr. Ayers of Quincy, petition of Bruce J. Ayers relative to arbitration with insurance companies for property damages to motor vehicles. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO ARBITRATION FOR AUTOMOBILE INSURANCE PROPERTY DAMAGE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 191A of Chapter 175 of the General Laws, as so
2 appearing in the 2000 Official Edition, is hereby amended by
3 striking the second subparagraph of paragraph one thereof, and
4 inserting in its stead, the following:—

5 If the named insured, or the repairer chosen by the insured to
6 make repairs to the vehicle, and the company fails to agree as to
7 the amount of loss, each shall, on the written demand of the other
8 made within ninety days after receipt of proof of loss by the com-
9 pany, submit to binding arbitration as to the amount of the loss.
10 The party demanding arbitration shall select a competent and dis-
11 interested licensed auto damage appraiser as an arbitrator and
12 shall identify the appraiser in its demand. The other party shall
13 thereafter select a competent and disinterested licensed auto
14 damage appraiser as a second arbitrator and shall identify the
15 appraiser to the party demanding arbitration within five working
16 days of receipt of the demand for arbitration. The two chosen
17 arbitrators shall choose another competent and disinterested
18 licensed auto damage appraiser, who shall then serve as an
19 umpire. If the two arbitrators chosen by the parties cannot agree
20 upon an umpire within five working days after being appointed,
21 then either party may file a petition for appointment of the umpire
22 with the division of the district court department of the trial court
23 for the district within which either the vehicle owner or the repair

24 shop chosen to make repairs is located. Such petition shall be
25 accompanied by a filing fee in the amount of the usual filing fee
26 for a complaint, as well as a list of not less than three competent
27 and disinterested licensed auto damage appraisers and a summary
28 of the qualifications of each such listed appraiser. At the time of
29 filing such petition, the court shall schedule same for hearing,
30 such hearing to be held within seven days of the filing. The peti-
31 tioner shall forthwith serve notification of the date and time of
32 hearing and a copy of the petition and submitted list of appraisers
33 upon the other chosen arbitrator by hand delivery or by certified
34 mail. Such other chosen arbitrator shall also submit a list of not
35 less than three competent and disinterested licensed auto damage
36 appraisers and a summary of the qualifications of each such listed
37 appraiser. At the scheduled hearing, the court shall appoint an
38 umpire from the lists submitted. Such hearing shall be held on an
39 informal basis, utilizing the rules of evidence applicable to cases
40 heard under the procedure established by section 21 of chapter
41 218. Within five working days of selecting the umpire, the two
42 initially chosen arbitrators shall also independently appraise the
43 loss, such appraisals to be made at a reasonable time and place.
44 Each arbitrator shall itemize the cost of repair, or shall state in
45 writing the actual cash value of a vehicle appraised as a total loss.
46 The arbitrators shall then attempt to agree as to the amount of the
47 loss. If the two chosen arbitrators shall fail to agree within five
48 working days after making their appraisals, they then shall submit
49 their appraisals to the umpire within three working days of the
50 expiration of the said five day period. The umpire, within five
51 working days of receiving the arbitrators' appraisals, shall make
52 an award, rendered by selecting one of the two appraisals as sub-
53 mitted by the arbitrators. An award in writing of any two shall
54 determine the amount of loss. Such decision shall be binding upon
55 the parties. Within five working days of the umpire's decision, the
56 insurer shall make payment on the award accordingly. The named
57 insured and the company shall each pay their own chosen arbi-
58 trator and shall bear equally the expenses of the umpire. An
59 insurer that fails to comply with the provisions of this section
60 shall be deemed to have engaged in unfair claims settlement prac-
61 tices in violation of section 3(9) of chapter 176D.